

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DURON WILSON HENTON,

Petitioner,

v.

**CIVIL ACTION NO.: 3:17-CV-64
(GROH)**

JENNIFER SAAD, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION IN PART

The above-styled matter came before the Court for consideration of the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. On October 12, 2017, Magistrate Judge Trumble issued his R&R in which he recommended that the Plaintiff’s § 2241 petition [ECF No. 1] be dismissed with prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Moreover, “[w]hen a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, *de novo* review is unnecessary.” Green v. Rubenstein, 644 F.

Supp. 2d 723, 730 (S.D. W. Va. 2009) (citing Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)). Failure to file timely objections also constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen days after the Petitioner was served, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure. The Court notes that the R&R was mailed to the Petitioner but no return receipt was received. However, the Petitioner filed a Motion for Voluntary Withdrawal from Report and Recommendation on October 30, 2017. ECF No. 15. In this motion, the Petitioner suggests that he has received the R&R because he seeks to voluntarily withdraw his § 2241 petition based on Magistrate Judge Trumble's findings that the Court does not have jurisdiction to consider the claim. Accordingly, it appears that the Petitioner does not object to the R&R, but that he seeks a dismissal without prejudice. Thus, this Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 14] should be, and is hereby, **ADOPTED IN PART** for the reasons more fully stated therein. Specifically, the Report and Recommendation is **ADOPTED** in its entirety, except that the Petitioner's § 2241 petition [ECF No. 1] is **DISMISSED WITHOUT PREJUDICE**, as requested by the Petitioner in his motion for voluntary withdrawal [ECF No. 15]. This matter is **ORDERED STRICKEN** from the Court's active docket.

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record

and to mail a copy to the *pro se* Petitioner by certified mail, return receipt requested, to the last known address as shown on the docket sheet.

DATED: November 1, 2017



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE